

REMARKS/ARGUMENTS

Claims 68-71 were pending in the present application. By virtue of this response, claims 68-71 have been amended, and claims 72-76 have been added. Accordingly, claims 68-76 are currently under consideration. Amendment and cancellation of certain claims are not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Continued Examination Under 37 C.F.R. 1.1.14

The Office Action of June 23, 2008 indicates that Applicants' submission filed on May 9, 2008 has been entered.

Copy of Claims

The Office Action of June 23, 2008 indicates that the status identifiers for claims 68-71 are incorrect. In response, the status identifiers for claims 68-71 have been amended to have the correct status identifiers.

Claim Objections

Claim 70 stands objected to because of an informality relating to the term "lest" in the claim. In response, the term "lest" has been replaced with the term "least". Applicants respectfully request that the objection be withdrawn.

Claim Rejections under 35 U.S.C. §102

Claims 68-71

Claims 68-71 stand rejected under 35 U.S.C. § 102 as allegedly anticipated by EP 0 759 730 B1 (hereinafter referred to as "Burmeister"). Applicants traverse this rejection.

For an anticipatory rejection to be proper, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989); *see also Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (holding that anticipation requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”). Moreover, while an identity of terminology is not required, the elements must nonetheless be arranged as required by the claim. *See In re Bond*, 910 F.2d 831, 832-833 (Fed. Cir. 1990) (stating that anticipation can not be established by mere equivalents).

Claim 68, from which claims 69-71 directly depend, has been amended to recite “a detection mechanism configured to measure the at least one of a geometry and conformation change of the in vivo sensor device.” Support for the detection mechanism can be found, *e.g.*, in lines 11-16 of page 7, lines 2-6 of page 9, and lines 21-23 of page 22 of the specification as filed. Burmeister fails to teach a detection mechanism configured to measure a geometry or conformation change in the in vivo sensor device. As such, Applicants submit that the anticipatory rejection of claims 68-71 cannot stand and request that it be withdrawn.

New Claims

Claims 72-76

Newly added claims 72-76 depend, directly or indirectly, from claim 71. Thus, for at least the same reasons described above, Applicants respectfully submit that claims 72-76 are patentable over Burmeister.

Moreover, claims 72-76 recite an in vivo sensor configured to measure a physiological condition, such as fluid flow rate, temperature, plaque, and electrochemical change. Support for these features can be found, *e.g.*, in lines 11-22 of page 1 and lines 10-20 of page 5 of the specification as filed. Burmeister does not teach an in vivo sensor configured to measure a physiological condition, such as fluid flow rate, temperature, plaque, and electrochemical change. Accordingly, Applicants submit that claims 72-76 are distinguishable over Burmeister.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the number provided below.

Any remarks in support of patentability of one claim should not be imputed to any claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertion regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby.

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

No fee is believed due with the filing of this document other than the any necessary extension fees. However, in the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this documents to Deposit Account No. 18-2000, of which the undersigned is an authorized signatory.

Respectfully submitted,

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